HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

LETTERS PATENT APPEAL NO. 477 OF 2004.
WITH
CIVIL APPLICATION NO. 527 OF 2004 and 306 of 2006.

Waman Laxman Thukrul. ..Appellant.

Versus.

Sahadoor Kalu Yadav. ..Respondent.

Mr. D. V. Powar for the appellant.

Mr P. R. Arjunwadkar for the respondents.

CORAM: S. B. MHASE &
SMT. NISHITA MHATRE, JJ.

DATE: JANUARY 31, 2007.

P.C.

1. Heard counsel for both sides. We have perused the order under challenge. This LPA arises under the following circumstances.

. Regular Civil Suit No. 55 of 2003 was filed by the respondent in the Court of Civil Judge Junior Division, Thane. In the said suit, the appellant has received summons and has appeared in the matter through Advocate. The appellant had also filed written statement. However, it appears that at a later stage the appellant remained absent. Therefore, the said suit proceeded ex-parte and decree was passed

by the 2nd Joint Civil Judge, Junior Division, Thane on 14th October 2003 thereby directing the appellant to vacate the suit premises. The decree was challenged by filing a first appeal. However, the First Appeal was filed at a belated stage and there was a delay of 153 days. Therefore an application for condonation of delay bearing M.A. No. 95 of 2004 was filed. That application was rejected on 5.8.2004. The said order of rejection of delay condonation application was challenged by filing Writ Petition No. 8647 of 2004. The learned Single Judge of this Court by order dated 27th October 2004 rejected the said writ petition. As against the order of rejection of writ petiton the present L.P.A. is filed. Thus, the present L.P.A. is directed as against the order of rejection of delay condonation application, being M.A. No. 95 of 2004.

2. The only ground which is mentioned for the condonation of delay is that, that the appellant was not knowing the decree passed against him by the 2nd Joint Civil Judge Jr. Division, Thane on 14th October 2003. The appellant claimed and pleaded that the appellant received knowledge of the said decree when the appellant received notice in execution petiton and thus from the date of receipt of the notice in

execution proceeding, the appeal has been promptly and deligently filed and therefore the delay may be condoned. However, this reason was not acepted by the First Appellate Court when M.A. No. 95 of 2004 was rejected. The said judgment and reasoning of the First Appellate Court has been found to be correct by the learned Single Judge of this Court. We also find that the orders passed by the First Appellate Court and the learned Single Judge of this Court are just and proper. It is well established principle of law that when the summons of the suit is served and the party appeared in the matter, and if at a later stage the suit is decided ex-parte, the party shall explain as to what were the circumstances which were beyond his control in not participating in the said suit and thereby the said party is under an obligation to explain by a sufficient cause the absence of the said party in the said proceeding. The party which is once served with the summons if remains absent and allows the decree to be passed is supposed to know the decree and therefore the ground that the decree was not known to the appellant and the appellant got knowledge of the same on receipt of the notice in execution petition is not an explanation which is tenable in law. Therefore, this Court also finds that the First Appellate Court and the learned Single Judge have

rightly concluded the matter. We do not find any reason to entertain the L.P.A. We refrain to entertain the L.P.A. Interim stay which was operative in this matter is hereby vacated.

3. In view of the disposal of the main appeal, civil applications do not survive and they are accordingly disposed of.

(SMT. NISHITA MHATRE, J.) **(S.B.MHASE, J.)**

:sachin/2007/nnm/..